

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
HON. DALE A. DROZD

UNITED STATES OF AMERICA,)	
)	1:20-cr-00238
Plaintiff,)	
)	Motion to Suppress Hearing
vs.)	
)	
KENNETH BASH, et al.)	
)	
Defendants.)	
_____)	

Fresno, California

Friday, November 19, 2021

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY: RACHAEL LUNDY, CSR, RPR, Official Reporter

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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1 Friday, November 19, 2021 Fresno, California

2 11:54 a.m.

3 (The following proceedings were held remotely via Zoom
4 application.)

5 THE CLERK: The Court calls United States vs. Kenneth
6 Bash, et al., case number 1:20-cr-238, scheduled for motion to
7 suppress, filed by Kenneth Bash, and joinder by the
8 co-defendants.

9 MS. STOKMAN: Good morning. Stephanie Stokman for
10 the United States.

11 MR. QUINLAN: Good morning, Your Honor. Scott
12 Quinlan for Mr. Bash. I don't see him on Zoom at the moment.
13 Well, I see that he's supposed to be over here, so --

14 Mr. Bash, are you there?

15 DEFENDANT BASH: I'm here.

16 MR. QUINLAN: Yes, he's here. That's Mr. Bash.

17 THE COURT: Mr. Bash, can you hear us?

18 DEFENDANT BASH: Yes, sir.

19 THE COURT: Other appearances?

20 MS. O'NEILL: Barbara O'Neil for Stephanie Madsen.

21 I'm requesting a waiver of her personal presence. I have had
22 frequent contact with her. I have spoken with her about this,
23 and she --

24 THE COURT: We can't do this. Nope, nope, nope.

25 MS. O'NEILL: I said --

1 THE COURT: No. No, stop.

2 THE CLERK: All the iPads at the Fresno County Jail,
3 can you guys mute?

4 THE COURT: Marshals, we need you to tell them to
5 mute all the screens except when they need to speak.

6 I need Mr. Palmer's screen muted. I need
7 Mr. McWilliams screen muted.

8 All right. Ms. O'Neil, I'm sorry. Go ahead.

9 MS. O'NEILL: Yes. I'm appearing for Stephanie
10 Madsen. I'm asking the Court to waive her personal
11 appearance. I have discussed this with her. She is working,
12 and she asked me to appear for her. And I have had frequent
13 contact with her, almost weekly.

14 THE COURT: Did you submit a written waiver of
15 appearance?

16 MS. O'NEILL: No, Your Honor. I did an email, and it
17 was indicated I could do it on the record. If that's
18 incorrect, I can file one after this.

19 THE COURT: I thought I remember you submitting a
20 written waiver of appearance. Maybe it was in another case.

21 Any objection to me allowing the waiver of
22 Ms. Madsen's appearance?

23 MS. STOKMAN: No objection.

24 THE COURT: All right. I'll accept the waiver of
25 appearance.

1 The next defense appearance?

2 MR. CRAWFORD: Good morning, Your Honor. Steve
3 Crawford appearing on behalf of Amanda Gourley, who's joined
4 in this matter. And I would ask the Court also for a waiver
5 of appearance. She is on the line in case the Court wants her
6 here, because we didn't get indication she can be excused.
7 But she is working today, and it makes it very difficult. And
8 as well as Ms. O'Neill's client, I've been in contact with her
9 as well.

10 THE COURT: And you ask that her appearance be waived
11 she's on the public line?

12 MR. CRAWFORD: Yes, Your Honor.

13 THE COURT: She can't confirm, because -- she can't
14 speak on the public line, so she can't confirm that. But I'll
15 excuse Ms. Gourley's appearance as well at the request of her
16 counsel.

17 MR. CRAWFORD: I appreciate that, Your Honor.

18 MS. STOKMAN: There's no objection from the
19 government, Judge. I did see Mr. Crawford filed that earlier
20 this morning or late last night, so no objection on that as
21 well.

22 THE COURT: Other defense appearances?

23 MS. MOSES: Good morning, Your Honor. Carol Moses on
24 behalf of Brock Larson. Mr. Larson is appearing by Zoom from
25 the Fresno County Jail.

1 MR. WILSON: Good morning, Your Honor. Roger Wilson
2 appearing for Marlon Palmer. Mr. Palmer is appearing via Zoom
3 from the Fresno County Jail.

4 Also making an appearance for Mark Coleman for
5 Mr. McWilliams, and I see he's present also in the Fresno
6 County Jail appearing by Zoom.

7 MR. TORRES: Good morning, Your Honor. David A.
8 Torres making an appearance on behalf of Jacob Renshaw. We do
9 consent to proceeding via Zoom. Mr. Renshaw appears to be
10 present via Zoom from the Fresno County Jail.

11 I've also been asked to make a special appearance on
12 behalf of attorney Monica Bermudez. She represents
13 Ms. Samantha Booth. With regard to Ms. Booth, a waiver is on
14 file, and with request -- Ms. Bermudez, she's asking to make
15 an oral request to join this motion, if there's no objection
16 by the government.

17 THE COURT: Any objection to Ms. Booth's joinder in
18 the motion even though one apparently hasn't been filed in
19 writing?

20 MS. STOKMAN: No objection.

21 THE COURT: All right. The joinder will be
22 recognized. I can't ask Ms. Booth whether she agrees to have
23 Mr. Torres represent her at this hearing, because she's not
24 present.

25 MR. TORRES: Your Honor --

1 THE COURT: Yes?

2 MR. TORRES: My apologies for interrupting. It's my
3 understanding Ms. Bermudez has spoken to her client, and she
4 does agree to my making a special appearance on her behalf and
5 the waiver is on file.

6 THE COURT: Okay. And Mr. McWilliams, I don't want
7 to unmute you, but do you agree that Mr. --

8 MR. WILSON: Wilson.

9 THE COURT: -- Wilson can make a special appearance
10 on behalf of your attorney, Mr. Coleman, and represent you
11 just at this hearing on the motion to suppress that's been
12 brought, and that you've joined in? And are you giving me
13 another nod?

14 DEFENDANT McWILLIAMS: Yes, (nods head.)

15 THE COURT: Mr. McWilliams nodding "yes," and a
16 thumbs up; a double agreement. So I'll allow that as well.

17 All right. Well, I'm sorry to keep you all waiting
18 so long. I've read the motion. Mr. Quinlan's declaration
19 with the 594 -- 590 pages of attachments, the government's
20 63-page opposition and the attachments, the defense reply --
21 Mr. Quinlan's reply. Is there anything else that -- and the
22 joinders, some of which added a little bit of additional
23 information with respect to each of the joinders. Is there
24 anything else I should have received in connection with the
25 motion?

1 MS. STOKMAN: Not from the government.

2 MR. QUINLAN: Not on behalf of Mr. Bash.

3 THE COURT: So I assume Mr. Quinlan is going to be
4 primarily responsible for the arguments since it's the motion
5 he filed and everybody has joined in?

6 Mr. Quinlan, I've read it all. I have only the
7 vaguest of senses of what this motion is about.

8 What I do understand it says somewhere, it says that
9 it's a *Franks* motion, I think.

10 MR. QUINLAN: A request.

11 THE COURT: Maybe it's a *Franks* motion, and I -- I
12 don't know, a probable cause motion. I'm not sure. I'm not
13 sure which warrants specifically that it -- which wiretap
14 authorizations it specifically aimed at. Here's my general
15 sense of what the motion is: Judge, there were two separate
16 investigations, the Bash investigation, and the -- what's the
17 other gentleman's name? I keep forgetting.

18 MR. QUINLAN: Eversole.

19 THE COURT: Eversole. And there was a Bash
20 investigation and an Eversole investigation. And the problem
21 with some warrant that I'm challenging is that with respect to
22 the requisite necessity showing, the affidavits to seeking to
23 authorize wiretaps of phones involved in the Bash conspiracy,
24 relied upon efforts that were undertaken and proved
25 unsuccessful in the Ever -- investigation of the Eversole

1 conspiracy.

2 MR. QUINLAN: Proved successful, successful in the
3 Eversole conspiracy.

4 THE COURT: Well, I'm not sure about that. Maybe
5 you'll enlighten me.

6 A wiretap was issued with respect to the
7 Eversole-related telephones. So I'm not sure what your point
8 there is. I remain confused about much of this motion.

9 But in any event, what my understanding is, you say,
10 Well, the government couldn't rely on their showing about
11 means that had been attempted and proved either successful or
12 unsuccessful in the Eversole investigation in establishing
13 that means would be -- traditional means of investigation
14 would be unsuccessful in the Bash conspiracy investigation.

15 And therefore, that is -- what? That either fails to
16 make a sufficient showing in support of the issuance of the
17 tapping -- or the wiretapping of the Bash-related phones, or
18 that's a material misrepresentation. I don't know. I don't
19 know what the defense position or argument is specifically.

20 And then, after that, whatever warrants it was that
21 are flawed because of that essential error, then all the --
22 all the -- all the wiretap authorizations after that, whether
23 they be state or federal, they're all tainted as a result of
24 that initial flaw. I think that's the position that's being
25 taken.

1 There's a few other things in here. I'm not exactly
2 sure what they are. I mean, I've read it. I'm confused by
3 it. It seems to me like the kitchen sink has been thrown --
4 the spaghetti has been tossed against the wall, and I'm not
5 exactly sure what's sticking and what's dripping down.

6 The government comes back and says, Well -- and its
7 lengthy. It's 63 pages of opposition. A lot of it deals with
8 general principals of wiretap law. I think the basic thing
9 about the government's opposition is, No, the whole defense
10 theory underlying this motion is -- is wrong, because this
11 was, in fact, one investigation.

12 I mean, when you set out on an investigation, was it
13 a coordinated investigation. You don't know where it's going
14 to lead. You don't know what the evidence is going to end up
15 showing eventually.

16 Any objection to the notion that we referred to the
17 Eversole wiretap application as being an earlier application,
18 it was earlier by a couple hours. But we weren't suggesting,
19 nor is there anything in those things to suggest that somehow
20 the Eversole wiretap resulted in the discovery of evidence
21 that supports the Bash wiretap application. We never said
22 that. It was one investigation. That's -- that's, in fact,
23 the case.

24 Did it play out that it may have different tentacles
25 and different arms? Sure, it might. We have no idea where

1 it's going to lead when we start, but there was no
2 misrepresentation.

3 And it's perfectly fine -- you know, that I think
4 Ms. Stokman used the major league baseball analogy to say,
5 Look, the fact that you tried something with respect to the
6 Giants and the Dodgers, and it wasn't successful, can't you
7 extrapolate from that that it's no more likely to have been
8 successful with the other major league teams? Yes, you can.
9 That's perfectly reasonable, and that's all that we did here.

10 Beyond that, the government gives me a lot of law.
11 This whole issue about whether unlawfully possessed contraband
12 cell phones are protected by the Fourth Amendment or not, I
13 mean, obviously, I'm not inclined to decide that issue,
14 especially if I don't have to. I would rather assume without
15 deciding that they are protected, and then analyze whatever
16 legal argument is being made about suppression and see where
17 that leads.

18 But I'll be honest with you, Mr. Quinlan, I really
19 don't even know what the -- what the defense's motion is all
20 about other than what I've just described.

21 A *Franks* showing -- and I know you know this. I
22 mean, I'm not saying that this is easy. I'm sure it's very
23 complicated. You know, what I really want to say,
24 Mr. Quinlan, is, I read the reply. The reply -- I'm thinking
25 that your hand was heavier in the reply brief than it was in

1 the motion, because the reply brief made sense to me. The
2 motion did not.

3 And I'm sorry to be so blunt about it, but that's the
4 truth. It didn't make a lot of sense to me, but the reply
5 did. That I understood.

6 And hey, I know you've been swamped too. You've been
7 in a long trial in front of me during the middle of this, so
8 I'm not casting any aspersions, but I'm struggling to figure
9 out really what -- what is the defendant -- what the defense
10 is even trying to present as the basis for the attack here.
11 And in particular to the extent it's a *Franks* motion,
12 what's -- what's the materially misleading fact? If that fact
13 were corrected, what would the application read like? And
14 given that rewritten application with the materially omitted
15 fact added or the misleading information omitted, why would
16 there not be probable cause supporting the issuance of the
17 wiretap? I don't think that's been done, or at least I can't
18 see it in all those pages.

19 I -- I -- really, I'm lost. So if you could help me,
20 tell me what it is I'm supposed to be focused on, I would
21 really appreciate it.

22 MR. MR. QUINLAN: Sure. The federal wiretap for
23 targets 1 through 5, which was submitted to you on September
24 16th, we don't have a problem with.

25 Also submitted that day, was the first of the three

1 state wiretaps that I'm going after.

2 I only chose the first three, because they extend
3 into their entire investigation of Mr. Bash. But I'm only
4 going after, right now, the first three.

5 The first one, the first state wiretap was on
6 September the 16th. And as though that wiretap is relied by
7 incorporation by reference on the investigation that had been
8 done of Eversole's operation, in the government's reply, they
9 point out -- and I cited to it in my reply, they point out
10 that they had great success against Eversole by the use of the
11 informants of Eversole, which was close to. And then, of
12 course, they surveilled it, and they -- they -- found out, you
13 know, source of supply, and they found out who his associates
14 were, and they did a lot of gun and drug transactions in
15 Eversole's operation.

16 And the government says in their reply -- or in their
17 opposition that they weren't successful using those techniques
18 with Bash, because unlike Eversole, with Bash they didn't have
19 anybody -- any CIs that they could use.

20 THE COURT: Right.

21 MR. QUINLAN: Right.

22 THE COURT: And you may make the point that, Look,
23 there was, in fact, a CI who -- who was in constant contact
24 with Bash, and that Bash had expressed a willingness to do a
25 deal with them.

1 MR. QUINLAN: Yes. And where the *Franks* part comes
2 in, is that at that interview -- and it's Bates number 9701 --
3 that interview with the ATF agents and this informant, was the
4 affiant in the state wiretap, Officer Phelps. He was also --
5 Officer Phelps was also at the July 10, 2010 interview of an
6 FBI informant who also could have been used. And that's at
7 Bates number 5380.

8 So when the affiant on all these three wiretaps --
9 it's the same affiant, Detective Phelps. When the affiant
10 swears to the judge looking at this that, We don't have
11 anybody, any informants or anybody that can get close to Bash,
12 and have the same kind of success using an informant, we don't
13 have anybody like that. That's false. They told the judge
14 that. That's false.

15 THE COURT: What exactly did they tell Judge --
16 it's --

17 MR. QUINLAN: The state judge. The state judge.

18 THE COURT: Yes, it's Judge -- the presiding judge of
19 the Fresno County Superior Court.

20 MS. STOKMAN: Judge Harrell.

21 THE COURT: Right --

22 MR. QUINLAN: They told the judge --

23 THE COURT: -- what did they tell him in that regard?

24 MR. QUINLAN: They told him that they were -- they --
25 that there were no -- they said that there was no -- I'm

1 looking for the exact language, Your Honor. I've cited to it
2 in my points and authorities, but they told the judge that
3 there was no informant that they could use with -- with the
4 Bash organization, and that's not true.

5 THE COURT: Okay.

6 MR. QUINLAN: They had certainly one and possibly
7 three, because the FBI interview discusses one known FBI
8 informant and possibly another one. They had three.

9 And so when Detective Phelps is inferring that they
10 can't use their most successful technique, which was informant
11 with surveillance of the Bash organization, that's not true.

12 THE COURT: So let me ask you this, why is that --
13 why is that material? Let's say I were to hold an evidentiary
14 hearing and decide, yes, that was not true. They had
15 available informants who had expressed willingness to deal
16 with Bash. And so it wasn't true when they told the reviewing
17 superior court judge that they had no ability to use
18 informants with respect to Bash, why -- why would that
19 inaccuracy of false statement be material?

20 The Eversole matter, where they did, and you make the
21 point, hey, they successfully used informants there. And
22 after using informants, they then said, yes, informants have
23 been used successfully, but they are of limited value. You
24 can only learn so much through the involvement of informants.
25 We can't discover all of the connections, all of the

1 involvement of everybody else. We can't go all the way up the
2 line of responsibility. We can't identify all sources. Also,
3 even though we can use informants, we can't do so and
4 effectively advance the investigation to its ultimate end.

5 So why would the nonuse of informants be material in
6 the Bash affidavit, even though the use of informants still
7 resulted in the issuance of Eversole wiretaps?

8 MR. QUINLAN: I want to start with the *U.S. versus*
9 *Carneiro*, the specific case I cited, 861 F.2d 1171, and this
10 is at 1181, and they're talking about omissions and
11 misstatements in a successful wiretap. It was called the
12 "Hardy wiretap."

13 And the Court says -- they suppressed the Hardy
14 wiretap, and the Court says, (as read):

15 "As noted above, the necessity requirement does not
16 compel law enforcement agencies to use wiretap, only
17 as a last resort. However, a wiretap cannot be the
18 initial step in a criminal investigation. Before
19 using a wiretap, the agents must, at the very least,
20 use traditional investigative methods that easily
21 suggest themselves are potentially productive and not
22 unduly dangerous."

23 So that case there says that if they have a known
24 successful technique, which they have a known successful
25 technique in Eversole's operation, and they have an informant

1 so that they can use that known successful technique in Bash's
2 operation. If they don't do it, then they haven't -- they
3 haven't fulfilled the necessity requirements.

4 Other cases --

5 THE COURT: Well, is this a *Franks* challenge, or is
6 it -- is it probable cause, that they haven't established the
7 need for a wiretap challenge?

8 MR. QUINLAN: Okay.

9 THE COURT: Which is it?

10 MR. QUINLAN: Okay. It's -- it goes to three
11 different things.

12 The first is, is that the -- if you put in the
13 correct information that they did have a CI that was available
14 with Bash -- with the Bash organization, then the application
15 is incomplete. If -- if there's a -- a dispute over that --
16 over whether that's accurate or not, what I'm telling you that
17 they had a Bash informant available and that Phelps, the
18 affiant knew it, if that was disputed that would be the reason
19 for the *Franks* hearing.

20 If you find that the face -- with the correct
21 information that the face of the wiretap affidavit showed
22 necessity, then you go on to the second task, whether or not
23 as a whole -- looking at it as a whole, the necessity was
24 shown for that particular wiretap.

25 So first, you look at it with the correct information

1 to see if the wiretap application itself is deficient for
2 failing to show necessity. If it passes that test, then you
3 look at it as a whole to see if -- if it shows necessity.

4 And like I say, the *Franks* part of it is, if you
5 dispute what I'm saying, that Affiant Phelps knew that they
6 had a CI who would work with Bash, and didn't disclose that,
7 that's an intentional -- not only an omission, because he
8 didn't disclose that they had a guy, but it's a
9 misrepresentation to the Court, because he misled the Court in
10 saying that they didn't have any such persons.

11 So that's it, in essence, in that regard, Your Honor.

12 As far as the two investigations go, the first
13 wiretap was for Bash associates. It was -- actually it was
14 for Ms. Bash, and it was for Mr. Smith, and it was for
15 officer -- oh, Stephanie Madsen.

16 There's no investigation of those people prior to
17 their -- their wiretaps. They surveilled them for two or
18 three days each to determine where they live, where Ms. Madsen
19 worked, and to determine that they were still using the
20 phones. And that was it. No other surveillance of them of
21 any -- of any note.

22 And they just applied for the wiretap. They
23 didn't -- they didn't use any informants. They didn't try to
24 develop who Mr. Bash was in contact with by the use of
25 informants.

1 The one informant who said -- whom Bash said he would
2 do business with, that conversation was recorded by that
3 informant. Well, law enforcement, they listened in on the
4 call, and they recorded it. And so those are the kinds of
5 things that were available to law enforcement, that law
6 enforcement misled the judge by representing that they were
7 not available to them in the Bash investigation.

8 The government has cited cases which really sort of
9 address the fissure between what I'm saying and what happened.

10 And in the case of *United States v. Rivera*, that's
11 another Ninth Circuit case, 827 F.3d 891, 2008 case. In that
12 case, they came down on the side that the wiretap the
13 application was okay. Here they note at page 903, they're
14 saying here that (as read):

15 "DEA conducted far more than a cursory investigation
16 before applying for the wiretap. Over the course of
17 19 months, the DEA conducted physical surveillance of
18 various targets of the investigation, conducted
19 telephone information analysis of target phones 1 and
20 2, and other telephone numbers associated with the
21 Rivera organization, used several confidential
22 sources to try infiltrate the Rivera organization or
23 purchase narcotics from it."

24 And they go:

25 "Thus the" -- continuing on, "thus the DEA's prior

1 wiretap investigation was significantly more thorough
2 than that called in *Gonzalez, Inc.*, and we find it to
3 be sufficient."

4 And that's -- what's missing here, is that all of
5 their investigation --

6 THE COURT: Stop. This is not helping me
7 particularly. It remains as clear as mud.

8 Is the defense moving on the grounds that with
9 respect to the Bash wiretaps obtained in state court --

10 MR. QUINLAN: Not all of them.

11 THE COURT: -- the Bash-related wiretaps obtained in
12 state court, that there was a failure to establish requisite
13 necessity?

14 And alternatively, that the two -- the extent there
15 was a showing of requisite necessity, that the requisite
16 necessity was based upon a false and materially misleading
17 affidavit, and that if the true information was revealed, that
18 requisite necessity would have been lacking to support the
19 issuance of the state wiretaps?

20 MR. QUINLAN: Yes. And also, I want to point out
21 that you if you take out the false statements and you plug in
22 the correct ones, then the standard of review for you is
23 whether or not a reasonable reviewing judge could have that
24 found that there was not sufficient necessity shown. That's a
25 legal standard. That's -- that's different from the other

1 tests that once you plug it in, you find that the affidavit is
2 technically sufficient. Then you look to see if using an
3 abuse of discretion standard, if the judge abused his
4 discretion in finding necessity as to the wiretap.

5 THE COURT: And I'm supposed to apply that less
6 demanding standard, because I'm reviewing a state court issued
7 wiretap?

8 MR. QUINLAN: No. That's federal law that I'm citing
9 in reviewing any wiretap application.

10 THE COURT: Okay. So in addition to the argument
11 that the Fourth Amendment protects unlawfully possessed
12 contraband cell phones, and this argument about -- and this
13 argument that the Bash-related wiretap applications failed to
14 establish requisite necessity, or that their showing in that
15 regard were based upon false or misleading statements provided
16 to the issuing superior court judge, is there any other
17 argument that is being advanced by the defense in support of
18 suppression of the wiretap evidence?

19 MR. QUINLAN: Title 3, the wiretap statutes, yes.

20 THE COURT: What's --

21 MR. QUINLAN: Title 3 --

22 THE COURT: What's the basis?

23 MR. QUINLAN: Well, Title 3 is the federal wiretap
24 statutes.

25 THE COURT: I understand that, but just saying I'm

1 moving to suppress pursuant to Title 3, doesn't tell me much.

2 MR. MR. QUINLAN: But they're the ones that have the
3 necessary requirements, and they're the ones that -- those
4 statutes -- those statutes, I cited to them.

5 THE COURT: I understand. How's that -- how's that a
6 different ground than what I just articulated about, they
7 failed to show requisite necessity, and to the extent they do
8 show requisite necessity, the showing is based upon false or
9 misleading information. Are you -- is that --

10 MR. MR. QUINLAN: That's part of Title 3, yes.

11 THE COURT: Is there something else?

12 MR. MR. QUINLAN: When you were talking about the
13 Fourth Amendment, I'm standing on Title 3. The Ninth Circuit
14 says --

15 THE COURT: We have a failure to communicate, but
16 it's -- I don't think I'm going to advance the ball by asking
17 any more. There's -- there's one issue about whether the
18 Fourth Amendment protects contraband cell phones by prisoners.
19 I don't want to reach that issue.

20 MR. QUINLAN: You ruled on that.

21 THE COURT: I understand. I don't want to base --

22 MR. QUINLAN: Set aside for a moment, if you would,
23 the Fourth Amendment.

24 THE COURT: Yes, let's do that.

25 MR. QUINLAN: Okay. I'm talking about the federal

1 statutes, which are collectively referred to as Title 3, the
2 Wiretap Act.

3 THE COURT: And that's what?

4 MR. MR. QUINLAN: Under the Wiretap Act, everything
5 I've told you already, the necessity showing, the test --

6 THE COURT: That's all Title 3.

7 MR. MR. QUINLAN: That's all Title 3, exactly.

8 THE COURT: I got it. I thought you were telling me
9 that there's some other Title 3 aspect that you're arguing was
10 violated that should lead to suppression. Is there anything
11 more?

12 MR. MR. QUINLAN: Other than what I've articulated
13 today and in my papers, no.

14 THE COURT: Okay. And then, the final position is,
15 and everything after these three state court issued wiretaps,
16 which are flawed because of a failure to show requisite
17 necessity, or that the requisite necessity showing was based
18 upon false or misleading information, the final argument is,
19 and everything that came thereafter, because it was based on
20 those state court wiretaps, those three that we're
21 challenging, they all relied on evidence developed in those
22 wiretaps and, therefore, it's all tainted; is that the final
23 kicker?

24 MR. QUINLAN: I'm only currently addressing the three
25 state wiretaps. First three, okay. I'm not addressing -- I

1 mean, I may say to you today, you know, because of everything
2 else is related to these first three wiretaps, I believe it's
3 all going to be suppressible. But that's not before you right
4 now. I haven't put those facts before you -- or those other
5 wiretaps, which would show that. I'm just after the first
6 three wiretaps right now.

7 The ones that I --

8 THE COURT: Okay.

9 MR. QUINLAN: -- attached to my declaration.

10 THE COURT: Before turning to Ms. Stokman, have you
11 told me what you want to tell me as far as getting me focused,
12 right, Mr. Quinlan?

13 MR. QUINLAN: I tried.

14 THE COURT: Do any other defense counsel want to say
15 anything before I turn to Ms. Stokman?

16 Hearing no takers, and given that all defense counsel
17 are sizing up the situation and saying, No, I'd rather not
18 poke that bear --

19 Ms. Stokman, Mr. Quinlan has helped me focus a little
20 bit on exactly what it is that this motion is all about.

21 His argument that the affidavits in support of the
22 Bash-related wiretaps, should have told the reviewing superior
23 court judge, Well, A, that they said that use of informants
24 wasn't available, and that that was the -- that statement was
25 false, because they had more than one, as I understand

1 Mr. Quinlan arguing now. There's evidence that they had more
2 than one informant who was dealing with Bash or willing --
3 that Bash was willing to deal with, who they could have
4 utilized, but they did not. And that that failure to tell the
5 reviewing superior court judge that was material to the
6 issuance of those wiretaps.

7 What's the government's position about, A, whether
8 that statement was false or misleading, why isn't the
9 defense's proffer in that regard sufficient to obtain an
10 evidentiary hearing as to -- to -- so that the affiant to
11 those wiretaps shouldn't be questioned as to why they omitted
12 that information?

13 And what's the government's position ultimately about
14 whether or not any such statement was material to the issuance
15 of those Bash-related wiretaps?

16 MS. STOKMAN: Judge, I think I can answer that all
17 with one blanket statement and then give a little bit of
18 detail. But Mr. Quinlan's statement to the Court and in his
19 papers is what's false and misleading here.

20 The affiant of the wiretaps did disclose that
21 individual, that informant, and the meeting with that
22 informant. That's how Mr. Quinlan knows about that informant,
23 because it's in the affidavit itself.

24 There's information about how law enforcement met
25 with this informant. The informant called Bash and other

1 people, and that Bash had mentioned he would want to work with
2 that informant.

3 The affidavit also when it discussed all the
4 informants that had been utilized, or tried to be utilized
5 within the investigation, describes that that informant was
6 inactive because law enforcement could no longer reach that
7 informant. And so they can't consider that informant to be
8 inactive, because they fell off the face of the planet with
9 regard to an investigation and any helpfulness they can
10 provide.

11 So in that sense, there's no material -- there's no
12 omission at all. And therefore, there's no material omission,
13 because that information is all laid out within the affidavit
14 itself.

15 THE COURT: And do you happen to have at your
16 fingertips where I should be looking to --

17 MS. STOKMAN: Yes, Judge. On affidavit 20-017, the
18 first affidavit, on page 81, there's a section regarding
19 recorded calls with Kenneth Bash and others. And there's a
20 reference in there that the person who made those calls is
21 then CRI8. And CRI8 is then discussed in the informant
22 section on page 138.

23 I will point out that in the discussion of CRI8, it
24 talks about recorded calls with Eversole, which is inaccurate.
25 That's inaccurate. That was a misstatement. But I believe

1 that to be a typo, because they do reference that it was CRI8
2 when they talk about the communication itself and the recorded
3 call itself.

4 But CRI8 is talked about on page 138, and that is
5 also where the affiant talks about how they consider that
6 informant to be inactive at the time of the author of the
7 affidavit.

8 THE COURT: You say it was inaccurate, and that it
9 referred to Eversole. Do you mean because it should have said
10 "Bash"?

11 MS. STOKMAN: Correct. But --

12 THE COURT: And does --

13 MS. STOKMAN: Based on --

14 THE COURT: Does it -- but does it say elsewhere that
15 it was Bash?

16 MS. STOKMAN: Yes. In the actual part on page 81,
17 where it talks about CRI8 making the recorded phone call and
18 what the call was about.

19 THE COURT: Mr. Quinlan has referred to another
20 informant that federal law enforcement had access to who
21 somehow was available to do deal with Bash. Do you know what
22 he's talking about in that regard?

23 MS. STOKMAN: Judge, my understanding is that it is
24 the same individual.

25 THE COURT: Same person?

1 MS. STOKMAN: That's my understanding.

2 THE COURT: I thought Mr. Quinlan was telling me
3 there were two but maybe not. I'll come back to Mr. Quinlan
4 if he needs to clarify that.

5 Is it the government's position that this was one
6 investigation?

7 MS. STOKMAN: Yes, Judge. In the sense that, as I
8 pointed out in my response, this is focused on not only
9 Fresneck criminal activity within Fresno County, but also the
10 larger umbrella of Aryan Brotherhood activity, because that's
11 where the orders and the communication is trickling down from
12 in order to reach the strength of the Fresneck criminal street
13 gang.

14 And based on that, the investigation was, as most
15 investigations at this level, the goals of that investigation
16 were not only to get to the players on the street, but also
17 the higher-ups within the organization that are in control of
18 that activity and that rely on that activity by people
19 underneath them for their own source of money or whatever it
20 would be.

21 And as the Court pointed out, was an investigation
22 that led to different tentacles because of the nature of how
23 the Aryan Brotherhood is organized in California.

24 And because of that, it all fell under one
25 investigation. There are key players that interact and

1 overlap. There are members of Aryan Brotherhood who are
2 associated with either Bash or Eversole, who also overlap and
3 interact. It's all one organization. And the players within
4 it, we consider to be part of the same gang and the same
5 organization.

6 THE COURT: So your position is that those state
7 court wiretap applications accurately revealed to the
8 reviewing superior court judge that, yes, at one time there
9 was an informant willing to deal with Bash, but that that
10 informant was no longer available to law enforcement
11 authorities, had fallen off the face of the earth, and that
12 law enforcement, therefore, considered that it was not
13 fruitful to utilize that informant.

14 MS. STOKMAN: Yes. That is correct.

15 THE COURT: Do you think I have to reach this issue
16 of whether Title 3 protects contraband cell phones or not, or
17 even if I assume without deciding that it does, I mean, do you
18 would -- does the government have any objection to me assuming
19 without deciding as long as I end up coming to the conclusion
20 that the government does that the motion to suppress should be
21 denied?

22 MS. STOKMAN: Judge, I believe that, yes, if that is
23 the Court's ultimate decision, that the motion to suppress
24 should be denied, because there are now joinders of defendants
25 who have standing to contest it, I don't think we need to get

1 into that.

2 However, it is our position that the incarcerated
3 defendants do not have standing to even bring this claim.

4 THE COURT: Mr. Quinlan, Ms. Stokman said you've got
5 no showing whatsoever of either a false statement or a
6 misleading statement or even a showing of a failure to
7 establish requisite necessity, because they disclosed the
8 informant in the affidavit. And the informant was no longer
9 available, and they specifically told the reviewing superior
10 court judge that. And game, set, match, end of story, no
11 *Franks* hearing, motion denied.

12 MR. QUINLAN: They didn't tell the judge about the
13 quarter-pound transaction CI was able to do a quarter pound
14 transaction at page -- page that have cited about informant
15 number 8, that was someone that inquired about work of both
16 Eversole and Bash, and they say that Eversole got back to him
17 about more work, but they don't say anything about whether or
18 not the informant ever got back with Bash about work.

19 But that's about something different. They don't
20 disclose that they had someone who would do a quarter pound
21 deal with Bash. They don't say that that person disappeared.
22 They have filed no declaration, and together with their reply,
23 they don't address the two FBI informants, which are noted by
24 me at Bates 5380. Those are people who were, at that time --
25 at least one of them was at that time, associated with AB.

1 And they don't talk about whether or not they could use that
2 person.

3 THE COURT: So Ms. Stokman, Ms. Stokman, I want to
4 interrupt Mr. Quinlan. See, he is talking about -- I don't
5 know now. He's telling me now there's three different
6 people --

7 MS. STOKMAN: Judge --

8 THE COURT: -- that the government had access to. I
9 don't know. I don't know what to make of any of this. Maybe
10 you are having as much trouble as I am trying to figure out
11 what the defense's motion is.

12 MS. STOKMAN: A little bit, Judge, but I understand
13 because I know the facts of this case, the reports that he's
14 referring to.

15 So the FBI informant is, in fact, addressed within
16 the affidavit as CRI number 5. That informant was
17 deactivated, because they showed up to a drug buy with drugs
18 on them. So they deactivated that informant after that. So
19 there was an attempt to use the FBI informant, but
20 unfortunately, it didn't-- it didn't work out because of
21 policies and what needs to happen when you're using an
22 informant.

23 THE COURT: How do I know from what's in front of me
24 that -- you're connecting, Oh, well, the guy that was willing
25 to do this deal but disappeared off the face of the earth,

1 he's the guy referred to in the affidavit as CR8.

2 The FBI informant, who got booted from the informant
3 program, because he showed up to a drug deal with drugs on him
4 when he wasn't authorized to, that's referred to in the
5 affidavit in question as CR5 or whatever.

6 How do I know this other than you telling me?

7 MS. STOKMAN: Judge, for CRI8, the affidavit lays out
8 that that is the person who was on the phone with Bash and
9 other individuals.

10 And then they reference in "description of the
11 informants used," CRI8, and why they were deactivated or
12 inactive.

13 CRI5 is also listed as an informant. In the section
14 of necessity it talks about the use of informant and what the
15 team had done already in that regard.

16 CRI5 does not specifically say this was an FBI
17 informant, but I think Mr. Quinlan connected the dots based
18 off of a report from FBI about meeting with that informant,
19 which at the time -- well, it's -- the fact that it's an FBI
20 informant, Judge, is not a material fact. The fact is that
21 they tried to use this informant. It is listed in the
22 affidavit, and they also talked about why that informant is
23 now deactivated.

24 And so what the Court should look at as far as what
25 the team has done with informants is the section in the

1 necessity part of the affidavit that does talk about the nine
2 CRIs, they're calling them, that were utilized during this
3 investigation.

4 And then discusses the pros and cons or the status of
5 each one. So that information is all there.

6 THE COURT: I guess what I'm asking is, where's the
7 scorecard, the evidentiary scorecard that tells me who's on
8 first?

9 MS. STOKMAN: I think --

10 THE COURT: You're matching up -- Mr. Quinlan is
11 making arguments about specific people. You're telling me,
12 Well, the person he's referring to is referred to in the
13 affidavit as CR5 or CR8.

14 How do I know that? How do I know that those are, in
15 fact -- that there's a link between the persons he's saying
16 weren't revealed and the people you say, No, they were
17 revealed. There they are.

18 MS. STOKMAN: Judge, I'm not really sure if there's a
19 missing link here, because the reason how Mr. Quinlan knows
20 about these informants is because they are listed in the
21 affidavit. And so that information is listed in the
22 affidavit.

23 Again, specifically, with CRI8, it's indicated when
24 it talks about the phone call that was made that it was with
25 CRI8. CRI8 is then discussed in the informant section. CRI5,

1 it doesn't specifically say what that informant was going to
2 try to get information from and about, only that informant had
3 previously made a controlled purchase that was successful, but
4 then showed up to the next controlled purchase with drugs in
5 their possession, and so they had been deactivated.

6 And so the point is that the affidavit does line out
7 and spell out the use of the potential informants that the
8 investigative team had at their disposal. And it talks about
9 either why they're still using them, or why they are not still
10 using them.

11 MR. QUINLAN: If -- thank you. If you were to look
12 at the federal wiretap addressing Eversole and the first state
13 wiretap, and if you were to compare the allegations regarding
14 the informant, they're -- they're practically cut and paste
15 out of the federal affidavit into the state affidavit with the
16 sole exception being -- well, not the sole, but primarily the
17 difference being in the federal affidavit they're called CRs,
18 and in the state affidavit, they're called CRIs, reliable
19 informant.

20 But the allegations are the same in both, and so I
21 have problems with what counsel is representing. But there's
22 no declaration from anybody that that's -- that's what
23 occurred, nothing from Mr. Phelps.

24 And the way that I found out about this was that we
25 went through discovery prior to the first wiretap, and I dug

1 up the original reports, which I've attached to my
2 declaration.

3 I've cited to the Court earlier today where they're
4 talking to the FBI informants, and where they're talking to
5 the person who can do a quarter pound meth deal with Mr. Bash.
6 And in those reports it says who's there. And who's there is
7 the affiant, Mr. Phelps. And this is occurring well before
8 the application for the first state wiretap.

9 I think, you know, if the government is going to
10 stand on what they're representing, then I think we need a
11 hearing to -- to flesh this out. And I would like the reports
12 that would go with the witness that whoever is going to be
13 appearing. Because I have looked through the reports, and I
14 don't see reports that say that. We scoured the discovery
15 just to find the references that I've been able to cite to the
16 Court.

17 THE COURT: All right. I'm not taking the motion
18 under submission. What I am taking under submission is
19 whether or not to hold an evidentiary hearing.

20 The hearing has been only somewhat helpful to me. I
21 remain mystified in large part by the defense's motion. Maybe
22 it's just because it's complex and there's a lot of affidavits
23 and a lot of wiretaps involved.

24 I'm a little bit concerned about the government's
25 argument that, Well, that the same informants that Mr. Quinlan

1 is saying were not revealed, they were revealed, because they
2 are identified by these numbers in the affidavit.

3 Without telling me how I link those two things, how
4 do I know that CR5 or CR8 is the person that Mr. Quinlan is
5 arguing wasn't revealed?

6 The government says because the information that they
7 could have provided is set forth in the affidavit itself.
8 That's where Mr. Quinlan learned about it.

9 He says that's not true at all. None of it's
10 revealed in the affidavit in support of the search warrant
11 application in superior court. It's buried elsewhere in the
12 discovery.

13 And there's no linkage between what it was that those
14 people could say, and how they have been identified in various
15 affidavits. I ought to be entitled to cross-examine the
16 affiant about whether this information was omitted or not.

17 MS. STOKMAN: Judge, if I may, I just want to clear
18 up that Mr. Quinlan is talking about -- I'm going to take them
19 separately -- CRI8 as someone who had a phone call with his
20 client and who was potentially going to follow up doing work
21 for Mr. Bash. That's how that phrase came out of the
22 conversation.

23 That conversation and that information is listed in
24 the affidavit with an indication that that conversation was
25 had with CRI number 8.

1 Then CRI number 8 is discussed within the informant
2 section, and they talk about why that CRI is no longer active.

3 CRI number 5 is also discussed, and they discuss --
4 on -- all the informant discussions, they discuss when they
5 began working the team, facts that they've provided before to
6 the team that they've -- that they've figure had -- you know,
7 that the team has previously known, that they were either
8 successful or not at buys, and they're still active, if they
9 are any issues that there might be; if they're not, why.

10 The information that is not in the affidavit is the
11 fact that CRI5, became the informant, the fact that there was
12 a traffic stop, and when they went to talk with that
13 informant, that's when the informant starting giving
14 information. That's not a material omission. What facts a
15 judge is looking at information for the necessity of a wiretap
16 needs is the availability and knowledge of an actual
17 informant. And --

18 THE COURT: Ms. Stokman, I'm going to stop you. I
19 don't think you understand my concern.

20 Mr. Quinlan is making an argument that there was an
21 informant who was willing to do a quarter pound deal with
22 Mr. Bash, and that that informant and his willingness --
23 Bash's willingness to deal with him was not disclosed to the
24 reviewing superior court judge.

25 You say, Oh, yes, it was. That was CR8. Where in

1 the affidavit does it establish that the informant that
2 Mr. Quinlan is talking about is CR8? Because, as I understand
3 it, you have never told me, Here it is, in the affidavit,
4 Judge. CR8 -- CR8, had contact with Bash. Bash was willing
5 to do a quarter pound meth deal with him, but then that --
6 that CR8 fell off the face of the earth. You've never
7 drawn -- you haven't pointed me to anything in the affidavit
8 that links what Mr. Quinlan is saying was not disclosed and
9 what you are saying with what was disclosed other than
10 essentially, Trust me, Judge, it's the same person.

11 How am I supposed to know that?

12 MS. STOKMAN: I understand, Judge.

13 And I think that the disconnect is that, I don't know
14 where the quarter pound information is coming from, but --

15 THE COURT: Well, neither do I. That has to do with
16 where we started this conversation. Where I said to
17 Mr. Quinlan, What's the specific false statement? What is the
18 evidence that it was false? How have you made a substantial
19 preliminary showing entitle you to a *Franks* hearing? None of
20 which was address satisfactorily in the opening conversation,
21 in my view. I mean, I feel like -- like you know, I said at
22 the beginning, all the spaghetti has been thrown against the
23 wall, and I feel like, Here, you figure it out.

24 But I am tired. I don't -- I'm not sure I'm going to
25 advance the ball much more by talking about it. I'm not

1 taking the motion under submission.

2 Mr. Quinlan, do you understand what I'm having
3 trouble with?

4 MR. QUINLAN: I'm having trouble -- no. And the
5 reason is that I -- in my moving papers, I've provided the
6 Court with the informants that I'm talking about and the
7 quarter pound meth conversation. And I reference that in my
8 moving papers that this is something that was not -- not
9 disclosed that they had available. So I'm -- I'm not trying
10 to hide the ball here, you know. It's -- it's attached. I've
11 got all the stuff and Bates numbers chronological or
12 sequentially.

13 And first one with the -- or at least the FBI
14 informant, that's 5380 attached to my declaration, but the
15 more important conversation to me is the quarter pound meth
16 deal, and that's 9701 attached to my declaration. So you
17 know, I've attached this stuff.

18 I see you shaking your head, you know, what --

19 THE COURT: Just not helping me. What would have
20 been helpful is: Here's the false statement. Here's the
21 evidence that it was false. If you correct it, here's why the
22 warrant would not have issued.

23 I don't see that anywhere in that opening motion.
24 The reply helps me a little bit more. I don't know. I guess
25 I just need to search through here for myself and see if I can

1 figure out what your position is on these points, which I
2 guess I will eventually do.

3 Right now I'm not taking the motion under submission.
4 I'm taking under submission the question of whether or not
5 you've at least established an entitlement to an evidentiary
6 hearing. After I decide that, I'll either hold a hearing, or
7 I'll take the motion under submission.

8 MR. QUINLAN: I wanted to just close off by
9 referencing that it's Bash Bates stamp 66 wherein the
10 affidavit -- the first affidavit, state affidavit -- or
11 actually, this is the federal one, it says (as read):

12 "Confidential human source, CHS8, began assisting the
13 investigative team in May of 2020. CHS8 completed a
14 recorded phone call, Eversole."

15 And they're now saying that was Bash.

16 "...but completed a recorded phone call with Eversole
17 and confirmed identities and phone calls for other
18 several lower-level targets of the investigation
19 approximately one month ago.

20 "CHS informed the investigative team that Eversole
21 had contacted CHS8 about doing more work. However,
22 the investigative team has not been able to contact
23 CHS8 since that time. The investigative team
24 considered CHS8 to be an inactive CHS at this time."

25 So --

1 THE COURT: See, that -- I mean, you telling me that,
2 tells me that if the government links Confidential Informant 8
3 to what you're saying wasn't revealed, and that was in the
4 state court warrant, then you haven't made a substantial
5 preliminary showing of anything. And you are not entitled to
6 a *Franks* hearing. And the motion to suppress is denied.

7 And the only question I have in my mind right now is,
8 where's -- how do I -- how do I link -- how do I link your
9 allegations with the government's representations? Is there
10 any evidence of it, or do I need an evidentiary hearing to
11 hear from the affiant to establish the link? That's it.
12 That's all I can say I've taken out of this hearing.

13 MR. QUINLAN: Well, I don't think that they've
14 established that this CHS8 is the same person that talked to
15 Mr. Bash. And I don't think they've addressed at all the FBI
16 affiant, which I've also cited to.

17 THE COURT: All right. The request for evidentiary
18 hearing is taken under submission. An order of some type with
19 issue.

20 MR. QUINLAN: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MS. STOKMAN: Thank you, Judge.

23 MR. WILSON: Thank you, Your Honor.

24 MS. MOSES: Thank you, Your Honor.

25 (Proceedings concluded at 1:07 p.m.)

1
2 I, RACHAEL LUNDY, Official Reporter, do hereby certify the
3 foregoing transcript as true and correct.
4

5 Dated: July 23, 2022

/s/ Rachael Lundy
RACHAEL LUNDY, CSR-RPR